



Features of child rights protection in the Republic of Uzbekistan

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ABSTRACT

This article is devoted to the characteristics of theoretical and legal issues of child rights protection in the Republic of Uzbekistan. The study reflects comprehensively the international legal regulation of the rights of the child.

The research is related to the state programs on the reforms carried out in the Republic of Uzbekistan, which are aimed at implementing the main provisions of the “Strategy of Actions of Uzbekistan for 2022–2026”, aimed at improving the system of public administration and full implementation of international legal norms regarding the rights of the child in the national legal practice of the Republic of Uzbekistan.

The study is distinguished by its uniqueness. It also provides extensive foreign experience in the regulation by States of the main issues on the rights of the child at the international and national legal level, and current problems of working with these issues in practice.

Some conclusions and suggestions formulated in the work can be used in further scientific developments, to improve national legislation on the rights of the child, and serve as a textbook for subsequent researchers of the topic on the rights of the child in jurisprudence.

In general, the idea of the work is that the legislation of the Republic of Uzbekistan regarding the rights of the child and the practice of its implementation in life should be systematized both at the normative and at scientific and applied levels. The results of this scientific generalization should be developed and substantiated proposals for improving the situation of children’s rights in Uzbekistan, and the effective application of international norms in the national legal practice of the Republic of Uzbekistan.

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Ўзбекистон Республикасида бола ҳуқуқларини ҳимоя қилиш хусусиятлари

Калит сўзлар:

бола ҳуқуқларини ҳимоя қилиш,
амалга ошириш,
Конвенция,
халқаро шартномалар,
болаларни ижтимоий ҳимоя қилиш,
вояга етмаганлар ишлари бўйича комиссия,
жиноятчиликнинг олдини олиш.

АННОТАЦИЯ

Ушбу мақола Ўзбекистон Республикасида бола ҳуқуқларини ҳимоя қилишнинг назарий ва ҳуқуқий масалаларининг хусусиятларига бағишланган. Тадқиқот бола ҳуқуқларини халқаро ҳуқуқий тартибга солишни ҳар томонлама акс эттиради.

Тадқиқот “Ўзбекистоннинг 2022–2026 йилларга мўлжалланган ҳаракатлар стратегияси”нинг асосий қоидаларини амалга оширишга қаратилган Ўзбекистон Республикасида амалга оширилаётган ислохотлар бўйича давлат дастурлари билан боғлиқ бўлиб, давлат бошқаруви тизимини такомиллаштириш ва халқаро ҳуқуқий нормаларни тўлиқ амалга оширишга қаратилган.

Тадқиқот ўзига хослиги билан ажралиб туради. Шунингдек, у халқаро ва миллий ҳуқуқий даражада бола ҳуқуқларига оид асосий масалаларни, ушбу масалалар билан ишлашнинг долзарб муаммоларини давлатлар томонидан тартибга солиш бўйича катта хорижий тажрибани тақдим этади.

Якуний малакавий ишда баён этилган баъзи хулосалар ва таклифлардан кейинги илмий ишланмаларда, бола ҳуқуқлари тўғрисидаги миллий қонунчиликни такомиллаштиришда фойдаланиш мумкин ва ҳуқуқшуносликда бола ҳуқуқлари мавзусини кейинги тадқиқотчилар ўрганишида қўлланма бўлиб хизмат қилади.

Умуман олганда, ишнинг ғояси шундан иборатки, Ўзбекистон Республикасининг бола ҳуқуқларига оид қонунчилиги ва уни ҳаётга татбиқ этиш амалиёти ҳам норматив, ҳам илмий ва амалий даражада тизимлаштирилиши керак. Ушбу илмий умумлаштириш натижалари Ўзбекистонда болалар ҳуқуқлари ҳолатини яхшилаш, халқаро нормаларни республиканинг миллий ҳуқуқий амалиётида самарали қўллаш бўйича таклифлар ишлаб чиқиши ва асосланиши керак.

Особенности защиты прав ребенка в Республике Узбекистан

Ключевые слова:

защита прав ребенка,
имплементация,
конвенция,
международные договора,
социальная защита детей,
комиссия по делам несовершеннолетних,

АННОТАЦИЯ

Настоящая статья посвящена характеристике теоретико-правовых вопросов защиты прав ребенка в Республике Узбекистан. Исследование комплексно отображает международно-правовое регулирование прав ребенка.

Исследование связано с государственными программами по проводимым в Республике Узбекистан реформам, которые направлены на реализацию основных

предупреждение
преступности.

положений «Стратегии развития нового Узбекистана на 2022–2026 годы», направленной на совершенствование системы общественного управления и всемерную имплементацию международно-правовых норм в части прав ребенка в национально-правовую практику Республики Узбекистан.

В статье также приводится обширный зарубежный опыт регулирования государствами основных вопросов по правам ребенка на международном и национально-правовом уровне, актуальные проблемы работы с этими вопросами на практике. В целом, идея работы заключается в том, что законодательство Республики Узбекистан в части прав ребенка и практику его реализации в жизни необходимо систематизировать как на нормативном, так и на научно-прикладном уровне. Результатами этого научного обобщения должны стать разработанные и обоснованные предложения касательно совершенствования положения прав детей в Узбекистане, эффективному применению международных норм национально-правовой практике Республики Узбекистан.

The Constitution of the Republic of Uzbekistan establishes the equality of all children at the highest legal level, regardless of their parent's origin and civil status.

Thus, the Constitution proclaims that a child should not be subjected to ill-treatment or humiliation, or be involved in work that may harm his physical, mental, or moral development. The CIS also adopted the Convention on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters, which was signed by Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine.

In order to create a more effective mechanism for the protection of rights, many countries are creating special bodies for the protection of children's rights: institutions of commissioners for the rights of the child (ombudsmen for the rights of the child). It should also be said that much attention is paid to the educational role of the mahalla. Deeper principles of democracy are brought up in this tradition [1].

State programs dedicated to the celebration of the 70th anniversary of the Universal Declaration of Human Rights [2] and The Year of Support for Active Entrepreneurship, Innovative Ideas and Technologies [3], and other program documents that contribute to ensuring the personal, political, socio-economic and cultural rights of citizens were of great importance in the implementation of the goals and objectives defined in the five-year Development Strategy of Uzbekistan.

In Uzbekistan, the promotion, observance, and protection of the rights of the child are considered one of the priorities of State policy. Today, the country has formed its own model of the systematic and phased implementation of international human rights standards into national legislation and law enforcement practice.

Currently, Uzbekistan has joined more than 70 major international human rights instruments, including 6 major UN treaties and 4 Optional Protocols, on the implementation of which national reports are regularly submitted to the Human Rights Council and the UN treaty committees [4].

2018 was marked in the world by the most important event in the field of human rights – the celebration of the 70th anniversary of the Universal Declaration of Human Rights, which marked the beginning of international legal regulation of human rights protection and the formation of national policies in this area, taking into account the democratic principles and requirements of this Declaration.

Events were held to celebrate the 30th anniversary of the adoption of the UN Convention on the Rights of the Child, and the 40th anniversary of the adoption of the Convention on the Elimination of All Forms of Discrimination against Women.

The Law “On International Treaties” [5] provides that international treaties of the Republic of Uzbekistan are subject to strict and binding execution by the Republic of Uzbekistan in accordance with the norms of international law. The Cabinet of Ministers of the Republic of Uzbekistan takes practical measures to ensure the implementation of international treaties of the Republic of Uzbekistan and, within its competence, determines state bodies and officials who are responsible for the implementation of international treaties of the Republic of Uzbekistan.

In order to implement international obligations in the field of human rights, the following legislative acts have been adopted:

1. The Law “On Administrative Procedures” of January 8, 2018;
2. The Civil Procedure Code of January 22, 2018;
3. The Economic Procedural Code of the Republic of Uzbekistan of January 24, 2018;
4. The Code of the Republic of Uzbekistan on Administrative Proceedings of 25.01.2018;
5. The Law “On the State Security Service of the Republic of Uzbekistan” of April 5, 2018;
6. The Law “On Public Control” of April 12, 2018;
7. The Law “On Countering Extremism” of July 30, 2018;
8. The Law “On Mediation” of July 3, 2018;
9. The Law “On the election of the chairman (Aksakal) of the Gathering of Citizens” of October 15, 2018;
10. The Law “On the approval of the Consular Charter of the Republic of Uzbekistan” of 17.01.2019;
11. The Law “On international treaties of the Republic of Uzbekistan” of February 6, 2019;
12. The Law “On the Protection of Victims, witnesses and other participants in criminal proceedings” of January 14, 2019;
13. The Law “On Administrative Supervision of a certain category of persons released from penal institutions” of April 2, 2019.;
14. The Law “On the Protection of Women from Harassment and Violence” of September 2, 2019;
15. The Law “On Guarantees of Equal Rights and Opportunities for Men and Women” of September 2, 2019.

Guarantees of the implementation of the labor rights of minors are enshrined in the current Labor Code, which in most cases correspond to the main international approaches to regulating the labor of minors. In particular, such norms, taking into account the provisions of the main conventions and recommendations of the ILO, provide:

- a) establishment of the minimum age of employment (from 16 years, from the age of 15 – only with the written consent of one of the parents);

- b) reduced working hours (from 15 to 16– 24 hours a week; from 16 to 18–36 hours);
- c) provision of annual extended working leave (30 calendar days);
- d) prohibition of involving minors in night, overtime, and weekend work;
- e) approval of the list of jobs where the use of the labor of minors is prohibited, etc.

Countries pay special attention to the prevention of offenses committed by minors. In Uzbekistan, for example, there is a special law in the field of prevention of neglect and delinquency among minors [6].

The commission of offenses by minors is among the circumstances mitigating administrative responsibility (paragraph 5 of Article 31 of the Administrative Code).

The Criminal Code (Articles 81-90) regulates the specifics of the criminal liability of minors. The separate system of milder punishments in force for minors testifies to the legislator's special approach to the problem of child crime.

However, the lack of specialized juvenile courts seems to affect the sphere of judicial proceedings. The Plenum of the Supreme Court noted that when considering cases of this category by courts, "due attention is not always paid to clarifying the causes and conditions that contributed to the commission of crimes, measures provided for by law aimed at their elimination are not taken" [7].

In our republic, these issues have just begun to be discussed at the state level. With the assistance of UNICEF, a round table was held in July 1998 on the need to introduce the Institution of an Ombudsman for the Rights of the Child in the Republic. The National Commission on the Rights of the Child is considering the establishment of special children's courts. But all this is at the stage of formation [8].

Analysis of the content of the Law "On Guarantees of the Rights of the Child" [9] allows us to say that the state provides:

- 1) protection of the life and health of the child;
- 2) non-discrimination of the child;
- 3) equality of rights and opportunities for children;
- 4) improvement of the legal basis of guarantees of the rights of the child;
- 5) openness of the activities of state bodies;
- 6) training, advanced training, and retraining of personnel;
- 7) formation of a child's legal awareness and legal culture;
- 8) cooperation between state bodies and NGOs, as well as international organizations in order to ensure the rights of the child;
- 9) promoting the social adaptation of children, and reducing juvenile delinquency (Article 4).

In order to increase the effectiveness of work on the upbringing of the younger generation, to ensure full-fledged social adaptation of children with disabilities, children from disadvantaged families or left without parental care, to affirm in the public consciousness the need to take care of children of this category as a prerequisite for strengthening the spiritual and moral foundations and foundations of society in accordance with the resolution of the Cabinet of Ministers of the Republic of Uzbekistan of September 7, 2004, No. 419, the Republican Center for Social Adaptation of Children under the Women's Committee of Uzbekistan was established.

In order to ensure the protection of the rights, freedoms and legitimate interests of the child, coordination of the activities of state and other bodies, organizations for the protection of the rights of the child, and an authorized body for the rights of the child may be established in accordance with the procedure established by law.

Recently, the President of the Republic of Uzbekistan Sh.M. Mirziyoyev signed a Law on Amendments to the Law “On Guarantees of the Rights of the Child” and the Criminal Procedure Code of the Republic of Uzbekistan. The document aimed at improving the protection of the rights and legitimate interests of children was adopted by the Legislative Chamber of the Oliy Majlis on October 18, 2019, and approved by the Senate on November 30, 2019.

Senator K.Kavlanova notes that the state takes measures to protect the child from being involved in committing offenses and antisocial actions, to prevent all forms of exploitation and violence against the child, as well as to identify and eliminate the causes and conditions that contributed to their commission.

Presidential Decree No. PP-4296 Of April 22, 2019 “On additional measures to further strengthen guarantees of the rights of the child” was signed in the republic. In this regard, the post of children’s Ombudsman is being introduced

Firstly, children left without parental care:

1) until they reach the age of eighteen, they are granted the right to reserve residential premises in the municipal and communal purpose housing funds in which they lived for the entire period of stay in the “Mehribonlik” houses.

Secondly, children who have reached the age of 14 can independently file claims for the recovery of alimony for their maintenance from their father or mother (in case of separation – simultaneously from each parent). This is possible if:

a) there is no agreement between the parents on the payment of alimony to persons under the age of 18;

b) parents do not pay alimony voluntarily;

c) neither of the parents has filed a claim for alimony in court.

Thirdly, plaintiffs are exempt from paying state fees and other payments when applying to the courts with an application for the protection of children.

Fourth, since September 1, 2019, a single minimum age of marriage has been established for men and women – 18 years.

Fifthly, the child has the right to express his opinion when resolving any issue affecting his interests in the family, as well as during any judicial or administrative proceedings.

Sixth, a “helpline” is being established in the system of the Republican Center for Rehabilitation and Adaptation of Victims of Violence and Suicide Prevention, designed to interact with citizens and provide emergency psychological, psychotherapeutic, legal assistance, counseling, and information. With its help, children will be assisted, a website with special features will be launched [10].

In general, it should be said that one of the priorities of state policy has been to improve the welfare of citizens through improving the regulation of the economic and social potential of the country and strengthening support for socially vulnerable categories of the population [11].

In order to implement the UN 2030 Agenda, the Government has adopted National Goals and Objectives in the field of Sustainable Development for the period up to 2030 [12], which approved 16 national goals and 125 tasks. The child’s right to adequate housing is crucial for the enjoyment of economic, social, and cultural rights. The adoption of special programs “Obod kishlok” (“Well-maintained village”), “Obod mahalla” (“Well-maintained mahalla”) is aimed at gradually improving the living conditions of the population, achieving positive changes in lifestyle and standard of living in order to give these villages (mahallas) a modern look, as well as creating new jobs.

A program for the further development of specialized medical care for the population for 2022-2026 was also approved.

In order to develop and implement a state order to ensure permanent employment of the population and the organization of new jobs, the procedure for allocating subsidies and grants at the expense of the State Employment Assistance Fund is being introduced.

Thus, since 2017, the interaction between the authorities and citizens has become completely different, allowing justice to be rooted in society, bringing leaders and officials closer to the population [13]. It is necessary to raise the system of dialogue with the people to a new level by launching an electronic portal and mobile applications that allow deputies to maintain constant communication with voters. This system should work so that the voter can monitor the daily activities of the deputy, discuss draft laws and express his opinion about them. That is, it is his voters who should give an assessment of the deputy's activities [14]. Thus, the essence of the reforms was expressed in the main principle "Not the people should serve the state bodies, but the state bodies should serve the people" [15]. Entering a new stage of development, along with an objective assessment of our potential and capabilities, we also made a detailed critical analysis of the shortcomings [16].

The republic is actively developing innovations in legislation in terms of quotas, open statistics, and the "electronic" registry office. Decree of the President of the Republic of Uzbekistan No. PP-4296 of April 22, 2019, provides for:

1. introduction, starting from the 2019/2020 academic year, of the procedure for allocating an additional admission quota of up to 1% of the total number of applicants entering universities on the basis of a state grant for graduates of "Mehribonlik" homes and orphanages who are orphans;

2. placement for 2 months on the website stat.uz statistical information on motherhood and childhood with constant updating of these data;

3. full implementation by the end of the year of the electronic data exchange system with the Registry Office of Birth and Death [17].

It is also planned to develop a huge number of legislative and by-laws in the republic, in particular:

- the draft Law "On the social protection of orphans and children left without parental care", amendments to the laws "On guarantees of the Rights of the child" and "On the Prevention of Offenses", amendments and additions to the Criminal Code (tougher sanctions for the commission of Part 2 of Article 154 of the Criminal Code against a minor; implementation of the Optional Protocol to the Convention UN Convention on the Rights of the Child in Article 135 of the Criminal Code);

- draft normative legal act on the revision of the system of guardianship and guardianship bodies, determination of the status and improvement of their activities;

- amendments and additions aimed at unifying the concepts of "minor" and "child" in the legislation, in order to create favorable conditions for the participation of persons under the age of 18 as subjects of legal relations [18].

The Law "On Guarantees of the Rights of the Child" formulates the main ideas, which are further developed in sectoral legislation or by-laws. However, some problems related to the protection of children's rights were not addressed due to the lack of concrete proposals for their resolution or due to legal contradictions arising [19].

Two points can be considered fundamentally important in the new version of the law. This is, firstly, the recognition of the child's right to independently defend their interests and, secondly, the specification and expansion of the boundaries of freedom, including the secrecy of correspondence.

Certain bodies carry out the protection of children's rights: guardianship and guardianship authorities; commissions (inspections) on juvenile cases; the prosecutor's office; the court. Let's briefly consider their functions.

1. Guardianship is a type of family arrangement of minors (minors under 14 years old) left without parental care. Guardianship is used to fill in the missing or missing capacity of such citizens and to protect their rights and interests.

But it should be noted that there are also gaps in our legislation that need to be filled. This concerns the fact that in some countries the performance of guardianship duties is carried out on a reimbursable or gratuitous basis. It is also possible to disclose this provision in more detail and, if necessary, include it in our legislation.

In order to improve control over the bodies that exercise guardianship and guardianship, it is necessary to create a separate body in the form of an auxiliary organization with highly qualified personnel who will have the appropriate authority and the necessary personnel and methodological support in the person of lawyers, psychologists, teachers, economists, who, in turn, will contribute to an objective and fair decision on appointment guardians and trustees.

It is possible to streamline the system of benefits, advantages, and other positive legal consequences for persons who have assumed the duties of guardians.

Guardianship as a form of protection of the rights and interests of incapacitated and not fully capable citizens has the following features that allow them to be distinguished from similar legal phenomena:

- 1) protection of the rights and interests of the ward by the actions of a certain person;
- 2) emergence of legal relations on the basis of a court decision;
- 3) right of the guardian (trustee) to perform all or some legally significant actions in the interests of the day laborer without special authority.

2. Commissions (inspections) on juvenile affairs

Minsk City Commission on Juvenile Affairs within its powers in order to prevent neglect and juvenile delinquency, and protect their rights:

- to develop and implement, through the relevant state bodies, and organizations, measures to prevent neglect and juvenile delinquency, eliminate the causes causing these phenomena, arrange for children and adolescents, and protect their rights;
- to monitor and coordinate the activities of subordinate commissions on juvenile affairs, and provide them with methodological assistance;
- to exercise other powers to prevent neglect [20].

We all know that the juvenile affairs commissions, together with the internal affairs bodies, organize monitoring of the behavior of minors subjected to educational measures or administrative penalties, sentenced to non-custodial punishment, conditionally convicted, and paroled.

A special aspect of the problem of crime prevention is the individual prevention of criminal behavior. Proceeding from the fact that the causes of individual criminal behavior are related to the general hierarchy of the causes of crime and reflect its main features at the individual level, criminology considers individual prevention of criminal

behavior as a concretization of general social and special criminological crime prevention measures in relation to an individual [21]. And for individual crime prevention, a well-coordinated work of law enforcement agencies is necessary.

A serious disadvantage is that minors fall into the sphere of preventive influence of law enforcement agencies and public organizations mainly after committing offenses [22]. As it was correctly noted by the First President of the country, I.A. Karimov, "Investigative bodies often do not identify the true causes and conditions of committing specific crimes, do not study the identity of the offender and the motives that pushed him to commit a crime. And the most dangerous thing is that because of criminal negligence, and vicious methods of work, we ourselves form a mass of discontented people who do not trust either the authorities or the laws from simple, generally law-abiding, but stumbled citizens. It is no secret that later it is from this category of citizens, especially young people, that we get hardened criminals" [23].

3. The Prosecutor's office and the court also belong to the bodies that protect the rights of children. The first, in turn:

1) supervises the accurate and uniform implementation of legislation on the prevention of neglect and juvenile delinquency by officials and citizens;

2) accepts information about the violation of the rights and freedoms of minors.

We see that the legislation of the republic has been supplemented with a norm according to which guarantees of judicial protection of the rights of the child, as well as a set of rights of the child who is a participant in the criminal process, have been strengthened. In particular, a ban is established on any mental or physical impact on a child, forcing him to testify or admit guilt, conducting procedural actions against children carried out during pre-trial proceedings and court proceedings, without the participation of their legal representatives. In addition, it provides for the mandatory participation of a defender in court cases for minors and the invalidity of the refusal of him by the child and his legal representative [24].

It is also noteworthy that the CPC of the Republic of Uzbekistan provides:

a) the possibility of participating in the case as a legal representative at the request of a minor or one of his adult close relatives;

b) mandatory participation of the legal representative of the minor in the procedural actions carried out in relation to his representation;

c) conducting an interrogation with the consent of a minor witness or victim in the presence of his legal representative;

d) conducting an interrogation of a minor suspect and accused with the participation of a defender, or a legal representative [25].

We consider it necessary to agree with the expression of the President of our republic that the practice of each judge submitting a report on his activities in local kengashes of people's deputies is considered quite popular. Also, the expansion of the practice of conducting on-site court sessions in mahallas, enterprises, and organizations aimed at the prevention of offenses was introduced. Modern technologies play a significant role in this, which are widely introduced into the activities of courts by ICT, including electronic shorthand and videoconferencing, the formation of an interdepartmental system of electronic information exchange to ensure the unconditional execution of court decisions [26].

In conclusion of this article, the following should be said. The ongoing reforms in the republic are aimed at improving the work on mechanisms for ensuring the rights of the child and solving many problems that arise in this area of legal work.

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